

MAX WEISS

IBLA 80-192

Decided August 25, 1980

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring various mining claims null and void. IMC 45403.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year, or a notice of intention to hold the mining claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Failure to comply with the statute and regulations governing the recordation with the Bureau of Land Management of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

3. Administrative Procedure: Hearings--Constitutional Law: Due Process--Mining Claims: Hearings--Rules of Practice: Hearings

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as

the individual is given notice and an opportunity to present his case before the deprivation becomes final.

APPEARANCES: Max Weiss, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a letter decision dated November 8, 1979, by the Idaho State Office, Bureau of Land Management (BLM), declaring 17 mining claims void for failure to file on or before October 22 (1979) either annual assessment statements or a notice of intention to hold the claims as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulation, 43 CFR 3833.2-1(a). That regulation provides:

§ 3833.2-1 When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Appellant's 17 "Kismet Group Mining Claims" in Shoshone County, Idaho, were located before October 21, 1976.

Appellant's certificates and amended certificates of location were timely filed with BLM on October 22, 1979. However, no evidence of annual assessment work or notice of intent to hold the claims was filed. Appellant indicates in his statement of reasons that "annual assessment labor has been performed each year except 1978 and 1979" for which years he was granted a deferment. Appellant further states that he made a good faith effort to comply with the recordation requirements, that he was not specifically aware of the requirement for recordation with BLM of evidence of assessment work or a notice of intent to hold the claim, and that his claims are a property right which should not be revoked without a hearing.

[1] The regulation above cited requires that owners of mining claims located prior to October 21, 1976, on Federal lands shall have filed in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recordation, whichever is earlier, evidence of annual assessment work performed during the preceding assessment year a notice of intention to hold the mining claim. This requirement is mandatory.

[2] Failure to comply with the regulations governing recordation of required data relating to unpatented mining claims must result in a conclusive finding that the claim has been abandoned. FLPMA section 1744(c); 43 CFR 3833.4(a); G. H. Monk, 47 IBLA 213 (1980); Walter R. Paul, 43 IBLA 119 (1979). The Kismet Group mining claims must be deemed conclusively to be abandoned and void for failure to submit on or before October 22, 1979, evidence of assessment work performed or notice of intention to hold the mining claims.

[3] Appellant's argument couching his mining claims as property rights of which he should not be deprived without a hearing has been addressed in previous decisions of the Board. In Dorothy Smith, 44 IBLA 25, 29 (1979), we stated:

[E]ven if due process were construed to require the Department of the Interior to afford appellants some form of hearing prior to declaring their mineral location null and void, the requirement is satisfied by appellants' appeal to this Board. It is well established that where there are not disputed questions of fact and the validity of a claim turns on the legal effect to be given facts of record which show the status of the land when the claim is located, no hearing before an Administrative Law Judge is required. United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432 at 453 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966), aff'g The Dredge Corp., 64 I.D. 368 (1957); 65 I.D. 336 (1958); H. B. Webb, *supra*; Roy R. Cummins, 26 IBLA 223 (1976); David Loring Gamble, 26 IBLA 249 (1976); Veal Martin, 18 IBLA 234 (1974).

See also Alva Rockwell, 47 IBLA 272 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joseph W. Goss
Administrative Judge

June 25, 1982

49 IBLA 332 (1980)	:	I MC 45403
IBLA 80-192	:	
	:	
MAX WEISS	:	Mining Claim Recordation
	:	
	:	Prior Decision vacated;
	:	Decision of Idaho State Office,
	:	BLM, Set Aside

ORDER

By decision styled Max Weiss, 49 IBLA 332 (1980), this Board affirmed a decision of the Idaho State Office, dated November 8, 1979, declaring various mining claims null and void for failure to file an affidavit of assessment work performed or a notice of intent to hold on or before October 22, 1979, as required by section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976). By letter of June 22, 1982, the Chief, Minerals Section of the Idaho State Office requested us to vacate this decision. This request was premised on the discovery that appellant had applied for and had been granted deferment of assessment within both calendar year 1978 and 1979. These documents had not been included in the case files originally transmitted to the Board.

Accordingly pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Board styled Max Weiss, 49 IBLA 332 (1980) is hereby vacated and the decision of the State Office dated November 8, 1979, is hereby set aside and the case files are transmitted to the State Office for any such further action as may be deemed appropriate.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

49 IBLA 334A

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49 IBLA 334B

